

**UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
(CHARLESTON DIVISION)**

David Oppenheimer,

Plaintiff,

v.

Michael C. Scarafile, Patricia R. Scarafile,
Sheila Glover Romanosky, and
O'Shaughnessy Real Estate, Inc., d/b/a
Carolina One Real Estate,

Defendants.

§ CASE NO: 2:19-cv-3590-BHH

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**COVER SHEET – EXH 6
LEJUNE-STIPKALA 7-26-21 EMAIL THREAD**

Scott Francis

From: Jeremy Stipkala <jeremy.stipkala@thrive-ip.com>
Sent: Tuesday, July 27, 2021 9:33 AM
To: Dana LeJune; Scott Francis
Cc: Sam Allen; Paula Taylor; Joann Korleski; Megan Moody; Will LaSalle; John D Hagler
Subject: RE: Deposition Format Proposal - Oppenheimer v. Scarafile et al.

Dear Dana:

For the record, we just spoke by telephone. Agreement was not reached on any matter.

You asked that we postpone the depositions of (a) Mr. Oppenheimer scheduled for July 29, 2021 and (b) Performance Impressions LLC (Rule 30(b)(6)) scheduled for August 2, 2021, unless Defendants agree to depose Mr. Oppenheimer and his company's designee (same Mr. Oppenheimer) in the same deposition limited to perhaps eight hours. We did not agree, and insisted on the depositions going forward as scheduled. I reiterated my assurance that the depositions will conclude as soon as possible.

We understand your firm position to mean that you **are not producing** Mr. Oppenheimer for his deposition at 9 AM on Thursday, July 29, 2021. Please let me know promptly **by noon today CDT** if you are, in fact, producing Mr. Oppenheimer Thursday.

We also had a "meet and confer" in our conversation regarding Mr. Oppenheimer's tax records and Performance Impressions LLC's tax records, and Plaintiff's objections to producing them that you served yesterday. See Defendants' RFPs 80-83. You stated that you would not produce those records without a court order.

We also discussed the Court's order regarding discovery motions without a teleconference with the Court. See First Amended Conference and Scheduling Order [ECF No. 39] at Para. 6. I stated that given the extraordinary circumstances of our judge (Judge Norton) announcing his imminent recusal (yesterday), the depositions starting Thursday (in two days), and discovery closing next week (August 6, 2021), it is probably acceptable for the parties to seek the Court's guidance by motion on discovery matters in spite of that order. I understand you to concur in that assessment, as you seemed prepared to file a motion for a protective order regarding the depositions.

Please let me know if I misunderstood or misstated anything from our conversation.

With best regards,

Jeremy

Jeremy M. Stipkala, Ph.D., J.D.
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From: Dana LeJune <dlejune@triallawyers.net>
Sent: Monday, July 26, 2021 6:06 PM
To: Jeremy Stipkala <jeremy.stipkala@thrive-ip.com>; Scott Francis <scott@triallawyers.net>
Cc: Sam Allen <sam@allenlegal.net>; Paula Taylor <paralegal@triallawyers.net>; Joann Korleski <joann@allenlegal.net>; Megan Moody <megan@carolinaoneplus.com>; Will LaSalle <wlasalle@thrive-ip.com>; John D Hagler <JDHagler@thrive-ip.com>
Subject: RE: Deposition Format Proposal - Oppenheimer v. Scarafile et al.
Importance: High

Jeremy:

We need to talk. I'd like you to postpone the depositions because we would like the court's guidance on the parameters for these two depositions, but we are ordered not to file any motions (Judge Hendricks' order has not been rescinded; as are you).

Please call me at your earliest convenience: 713-858-3058. I'd like Sam Allen to be on the call also, so when you call, I plan to patch him in.

Dana

From: Jeremy Stipkala <jeremy.stipkala@thrive-ip.com>
Sent: Monday, July 26, 2021 3:33 PM
To: Scott Francis <scott@triallawyers.net>
Cc: Dana LeJune <dlejune@triallawyers.net>; Sam Allen <sam@allenlegal.net>; Paula Taylor <paralegal@triallawyers.net>; Joann Korleski <joann@allenlegal.net>; Megan Moody <megan@carolinaoneplus.com>; Will LaSalle <wlasalle@thrive-ip.com>; John D Hagler <JDHagler@thrive-ip.com>
Subject: RE: Deposition Format Proposal - Oppenheimer v. Scarafile et al.

Dear Scott:

Thank you for your agreement as to the videoconference format of Mr. Oppenheimer's deposition on Thursday, July 29, 2021. Please find attached a **First Revised Deposition Notice of David Oppenheimer** to reflect the format change.

Can we stipulate that the Notary Public can appear remotely, via video conference, to avoid having Mr. Oppenheimer physically join a Notary Public in the same room? Let us know tomorrow, July 27th.

Regarding exhibits, we can agree to send you what we have for Mr. Oppenheimer's deposition on July 27th, but we must reserve the right to supplement on July 28th. We are still gathering exhibits.

We look forward to Performance Impressions LLC's documents and objections tomorrow, July 27th. But we insist on a separate deposition under Rule 30(b)(6) for the LLC. Please find attached a **Second [Corrected] Notice of Rule 30(b)(6) Deposition of Performance Impressions LLC**, which changes the format to videoconference, but otherwise notices the deposition for August 2nd as before. If we do not see the LLC's designee on August 2nd, we will move to compel.

Here are the invitations for the video depositions:

Topic: Deposition of David Oppenheimer
Time: **Jul 29, 2021 08:30 AM Eastern Time** (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/83982398180>

Meeting ID: 839 8239 8180
Passcode: 358843

Dial by your location
+1 312 626 6799 US (Chicago)
+1 646 876 9923 US (New York)
+1 301 715 8592 US (Washington DC)
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 253 215 8782 US (Tacoma)

Meeting ID: 839 8239 8180
Passcode: 358843

Topic: Rule 30(b)(6) Deposition of Performance Impressions LLC
Time: **Aug 2, 2021 08:30 AM Eastern Time** (US and Canada)

Join Zoom Meeting
<https://us02web.zoom.us/j/87201859479>

Meeting ID: 872 0185 9479
Passcode: 738829

Dial by your location

+1 301 715 8592 US (Washington DC)

+1 312 626 6799 US (Chicago)

+1 646 876 9923 US (New York)

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

Meeting ID: 872 0185 9479

Passcode: 738829

With best regards,

Jeremy

Jeremy M. Stipkala, Ph.D., J.D.
U.S. Patent Attorney

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From: Scott Francis <scott@triallawyers.net>
Sent: Monday, July 26, 2021 11:17 AM
To: Jeremy Stipkala <jeremy.stipkala@thrive-ip.com>
Cc: Dana LeJune <dlejune@triallawyers.net>; Sam Allen <sam@allenlegal.net>; Paula Taylor <paralegal@triallawyers.net>; Joann Korleski <joann@allenlegal.net>; Megan Moody <megan@carolinaoneplus.com>; Will LaSalle <wlasalle@thrive-ip.com>; John D Hagler <JDHagler@thrive-ip.com>
Subject: RE: Deposition Format Proposal - Oppenheimer v. Scarafile et al.

Jeremy,

I appreciated you reconsidering the format for the depositions.

I believe we can agree to most of your proposals – with the exception of Defendants’ continued intent to use two (2) separate 7-hour depositions to question Mr. Oppenheimer over multiple days.

We will agree to conduct the depositions by Zoom or another suitable videoconferencing service on July 29th.

We will also stipulate that the attorneys and any other person assisting Mr. Oppenheimer remain visible at all times during the record portion of the depositions.

We will agree to send you Performance Impressions, LLC’s objections and responsive documents on Tuesday, July 27th.

However, we need to see the exhibits Defendants expect to use more than one day in advance and therefore request that you provide such exhibits on July 27th as well. This, of course, excludes any exhibits that Defendants intend to use from the documents produced by us on Tuesday, January 27th. Any exhibits pulled from our July 27th production may be sent the day before the deposition (July 28th).

Finally, as stated, we will agree to present Mr. Oppenheimer – both in his individual capacity and as representative for Performance Impressions – for a single day of testimony on July 29th. However, we continue to object to presenting him for two (2) separate depositions (for potentially 14 hours of testimony) as unnecessary, unduly burdensome, and certainly not proportionate to the needs of the case.

Thank you,
Scott

From: Jeremy Stipkala <jeremy.stipkala@thrive-ip.com>

Sent: Friday, July 23, 2021 3:36 PM

To: Scott Francis <scott@triallawyers.net>

Cc: Dana LeJune <dleune@triallawyers.net>; Sam Allen <sam@allenlegal.net>; Paula Taylor <paralegal@triallawyers.net>; Joann Korleski <joann@allenlegal.net>; Megan Moody <megan@carolinaoneplus.com>; Will LaSalle <wlasalle@thrive-ip.com>; John D Hagler <JDHagler@thrive-ip.com>

Subject: Deposition Format Proposal - Oppenheimer v. Scarafile et al.

Dear Scott:

We are reconsidering the format for the depositions. Please let us know if you agree to our proposal below.

We have been working to ensure that everyone on our side attending the live depositions scheduled for July 29, 2021, and August 2, 2021 are willing to produce Covid-19 vaccination records. That is so that Mr. Oppenheimer would be as comfortable as possible in that regard. Unfortunately, however, we have not been successful, as vaccination status is a private matter.

Accordingly, we propose doing both of Mr. Oppenheimer’s depositions remotely by Zoom or another suitable videoconferencing service. They can be held on the days currently scheduled, or the 30(b)(6) deposition can be moved to July 30th. The depositions would be recorded by stenographic means and by video including sound.

We would ask you to stipulate that the attorneys and any other person assisting Mr. Oppenheimer in those depositions remain visible to all participants during the "record" portion of the depositions especially while questions are pending.

We would send you the exhibits we expect to use in the deposition the day before. You would be responsible for ensuring that he has the exhibits handy for the depositions.

You would send us the documents requested in the Rule 30(b)(6) Notice at least two business days before that deposition. We need to review them, mark them with exhibit numbers, and send them back.

Alternatively, we can do the depositions live as scheduled, and Mr. Oppenheimer would have to waive any objection he has regarding Covid-19 vaccination status.

Please let us know if you agree to this proposal by close of business Monday, July 26, 2021.

With best regards,

Jeremy

Jeremy M. Stipkala, Ph.D., J.D.
U.S. Patent Attorney

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